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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES J. ROWE, Director, Illinois Department of Corrections, J. BOLES, J. M. CHECK, E. M. CAMY and T. WHEATON,

Petitioners,

vs.

WILLIAM CHAVIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the decisions by this Court in *Brady* v. *Maryland* 373 U.S. 83 (1963) and *United States* v. *Agurs,* 427 U.S. 97 (1976) should be extended beyond the context of criminal prosecutions to prison disciplinary proceedings.

PARTIES

The following is a list of all parties involved in this application for a Writ of Certiorari:

A. PETITIONERS[1]:

1. J. Boles
2. J. M. Check
3. E. M. Camy
4. T. Wheaton

B. RESPONDENT:

1. William Chavis

---

[1] Although Charles J. Rowe, Director, Illinois Department of Corrections, was a party to certain other claims before the District Court and Court of Appeals, he was not a party to the claim relating to the instant question presented for review.

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vs.

WILLIAM CHAVIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners J. Boles, J. M. Check, E. M. Camy and T. Wheaton, State Correctional Officers at the Stateville Correctional Center in Joliet, Illinois, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on March 11, 1981.

OPINIONS RENDERED IN LOWER COURTS

The opinion of the Court of Appeals is reported at 643 F. 2d 1281 and is reproduced herein as Appendix A. The order and opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is not reported and is included herein as Appendix B.

JURISDICTIONAL GROUNDS

The judgment and opinion of the Court of Appeals for the Seventh Circuit was entered on March 11, 1981. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Articles of Amendment XIV, § 1.

AMENDMENT XIV

SECTION I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Respondent is an inmate in the Illinois Department of Corrections. (hereinafter referred to as "Department") On September 28, 1976, one Robert H. Sipp, a correctional officer in the Department, was stabbed as he was escorting a group of prisoners at the Stateville Correctional Center in Joliet, Illinois. (hereinafter referred to as "Stateville") Respondent was a member of the group being escorted by Sipp.

On October 9, 1976, Captain J. Boles wrote an Inmate Violation Report charging respondent with "assaulting an employee". This report further stated that "through investigation you have been identified as having stabbed Officer R. Sipp." A prison disciplinary hearing on this report was held on October 12, 1976 before the Stateville Adjustment Committee. The members of the Committee were J. M. Check, E. M. Camy and T. Wheaton. The Adjustment Committee found respondent guilty of the charge and ordered him transferred to segregation, demoted to "C grade", and deprived of two years statutory good time.

Respondent then filed a grievance with the Stateville Inquiry Board which reported on November 1, 1976 that it found no error in the proceedings below. Respondent appealed this finding to the Department's Administrative Review Board.

The Administrative Review Board met on February 4, 1977 and discussed the circumstances surrounding the stabbing incident. The Review Board was provided with a copy of the investigation report made on the stabbing incident. The investigation report showed that a polygraph examination had been administered to an inmate assisting in the investigation of

the stabbing. The examination indicated that the inmate was telling the truth when he identified respondent as the party who was to take out the "hit" on Officer Sipp on September 28, 1976. The examination also indicated, however, that the inmate was telling the truth when he identified another inmate as having stabbed Officer Sipp. After reviewing the investigation report, the Review Board concluded that it did not substantiate the allegations of Boles' disciplinary report written on October 9, 1976. The Review Board recommended expungement of the disciplinary report from Respondent's records, Respondent's release from segregation, grade restoration, and restoration of good time. Charles Rowe, the then Director of the Department, concurred in these findings.

Thereafter, on September 27, 1977, respondent filed a complaint in the District Court against Rowe, Boles, Check, Camy, and Wheaton under Title 42 U.S.C. § 1983. Jurisdiction was alleged under Title 28 U.S.C. § 1343. The complaint alleged, in part, that the Stateville Adjustment Committee's failure to disclose the investigatory report to Respondent deprived him of due process in violation of the Fourteenth Amendment. On May 31, 1978, the District Court dismissed respondent's entire complaint for failure to state a claim upon which relief could be granted.

Respondent appealed the dismissal order pursuant to 28 U.S.C. § 1291 *in forma pauperis.* After briefing, the Court of Appeals, by order dated January 22, 1980, directed the appointment of counsel and ordered supplemental briefs. On March 11, 1981, the Court of Appeals issued its opinion in which it found, in part, that the Adjustment Committee's failure to disclose to Respondent the investigatory report stated a due process claim based upon ***Brady*** v. ***Maryland,*** 373 U.S. 83 (1963) and ***United States*** v. ***Agurs,*** 427 U.S. 97 (1976). The Court of Appeals reversed the District Court's decision and remanded the case for further proceedings.

REASONS FOR GRANTING THE WRIT

The action of the United States Court of Appeals in this case has produced a question which is one of first impression before this Court. The issue resulting from the decision of the Court of Appeals is whether the decisions of this Court in *Brady* v. *Maryland,* 373 U.S. 83 (1963) and *United States* v. *Agurs,* 427 U.S. 97 (1976) should be extended beyond the context of criminal prosecutions to prison disciplinary hearings. It is submitted that the conclusion of the Court of Appeals that the requirements of these decisions should be extended to prison disciplinary hearings results from an overestimation of the proper reach of the *Brady* and *Agurs* decisions, and a failure to fully perceive the impact of such a ruling on the internal administration of a prison system.

In *Brady* v. *Maryland, supra,* this Court held that in a criminal prosecution, the suppression by the prosecutor of evidence favorable to the accused, in the face of a defense request for such evidence, violates due process where that evidence is material on the issues of either guilt or punishment. On occasion, after the decision in *Brady,* this Court expanded the reach of the *Brady* rule within a prosecutorial context where it appeared that such an expansion was necessary. Thus, for example, in *Giglio* v. *United States,* 405 U.S. 150 (1971), this Court expanded the prosecutor's duty of disclosure to include disclosure of evidence which might be used by a criminal defendant for purposes of impeachment. Subsequently, in *United States* v. *Agurs, supra,* this Court further expanded the prosecutor's duty of disclosure by requiring disclosure of favorable evidence even if not specifically requested by the accused. However, although this Court has expanded the *Brady* rule within the context of criminal prosecutions, no case has ever been decided and none was cited by the Court of Appeals indicating that this Court ever intended to extend the reach of

Brady v. *Maryland* or *United States* v. *Agurs* into a non-prosecutorial disciplinary proceeding, such as a prison disciplinary proceeding. Indeed, neither *Brady* nor *Agurs* has any substantial bearing on the question of whether an inmate must be given access to evidence material to either guilt or punishment at "prison disciplinary hearings [which] are not part of a criminal prosecution". *Wolff* v. *McDonnel,* 418 U.S. 539, 556 (1976). This Court has never held that the requirements of *Brady* or *Agurs* must be met in order to afford an inmate due process at a prison disciplinary hearing. See: *Wolff* v. *McDonnel, supra; Baxter* v. *Palmigiano,* 425 U.S. 308 (1976).

In *Wolff* v. *McDonnel, supra,* this Court recognized that prisoners are not without the protections of due process at prison disciplinary hearings. Yet, this Court acknowledged that the fact of incarceration necessarily implied some limitation of a prisoner's rights and privileges. This Court noted that:

> Prison disciplinary proceedings are not a part of a criminal prosecution and the full panoply of rights due a defendant in such proceedings does not apply. (*Wolff* v. *McDonnel,* 418 U.S. at 558)

Thus, this Court has recognized that various aspects of due process that are available in an accused's defense at a criminal trial are not required at a prison disciplinary hearing. A prisoner has no right to representation by counsel at his hearing, (*Baxter* v. *Palmigiano,* 425 U.S. at 314-15), nor does a prisoner have the right to confront and cross-examine witnesses against him. *Wolff* v. *McDonnel,* 418 U.S. at 567-69. Furthermore, in *Baxter,* this Court held that the fact that state prison authorities drew adverse inferences from a prisoner's silence at a disciplinary hearing did not of itself offend the due process clause of the Fourteenth Amendment even though such inferences would be patently unconstitutional in a criminal context. In so holding, this Court in *Baxter* rejected an attempted extension of the rule in *Griffin* v. *California,* 380 U.S. 609

(1965) beyond the context of criminal prosecutions to prison disciplinary proceedings finding that prison disciplinary proceedings involve important state interests other than conviction for crime. *Baxter* v. *Palmigiano,* 425 U.S. at 318-19. Similarly, in the case at bar, the due process right provided to a defendant in a criminal prosecution by this Court in *Brady* and *Agurs* is not part of that minimal due process accorded to prisoners in a disciplinary hearing by this Court's decisions in *Wolff* and *Baxter* because important state interests other than conviction for crime are involved.

In *Wolff,* this Court emphasized that in determining what process was to be accorded a prisoner in disciplinary proceedings, some mutual accomodation must be made between institutional needs and objectives and the generally applicable constitutional provisions. *Wolff* v. *McDonnel,* 418 U.S. at 539. The extension of the *Brady* and *Agurs* rule to prison disciplinary proceedings would inevitably give the proceedings a more adversary cast than is warranted by their purpose. Unlike criminal prosecutions which have as their purpose the ascertainment of guilt and the meting out of punishment, the purpose of prison disciplinary hearings is rehabilitative. The requirements of the *Brady* and *Agurs* rule derive from the unique attributes of criminal prosecutions where the accused, if found guilty, may be subjected to the most serious deprivations, and should not be extended into a non-prosecutorial setting where the deprivations are much less serious. *Wolff* v. *McDonnel,* 418 U.S. at 953-54.

The Court of Appeals not only failed to recognize these crucial differences in purpose but also ignored the differences in the conduct of disciplinary proceedings as opposed to criminal prosecutions. In a criminal trial the only evidence which is presented to the finder of fact is that which is placed in evidence by one of the parties. As a result, it is essential that the prosecution not be allowed to keep exculpatory information from the accused. In contrast, in the instant case, the disciplinary committee as the finder of fact had seen the investigatory report which the Respondent claims was withheld from him and was able to give this piece of evidence full

consideration before making its decision. As such, no *Brady* analogy can or should be drawn to prison disciplinary proceedings.

Furthermore, although the Court of Appeals saw great importance in extending the operation of *Brady* and *Agurs* to prison disciplinary hearings, the Court of Appeals failed to perceive the adverse consequences on the internal administration of a prison flowing from such an outright extension of these decisions to prison disciplinary hearings.

Prison personnel must frequently rely upon information provided by inmate informants in order to maintain institutional security, order, and discipline. Such informants must, however, be protected from any possible retaliation. As this Court recognized in *Wolff,* retaliation against inmate informants is much more than a theoretical possibility. *Wolff* v. *McDonnel,* 418 U.S. at 562.

> Relationships among the inmates are varied and complex and perhaps subject to the unwritten code that exhorts inmates not to inform on a fellow prisoner. (*Wolff* v. *McDonnel,* 418 U.S. at 562).

The decision by the Court of Appeals will discourage the cooperation of other inmates in future investigations of prison disturbances because this decision will inevitably be read by prisoners as allowing complete discovery of a disciplinary committee's file including the identity of inmate informants. Consequently, inmates will be less likely to come forward in the future as informants if they believe that a disciplinary committee could disclose their identity as informants. As a result, the efforts in maintaining the security of a prison facility would be thwarted, since in most cases, the only manner in which prison disturbances can be investigated is through the assistance and cooperation of inmate informants. Thus, the decision of the Court of Appeals would seriously hamper the internal administration of a prison facility by jeopardizing institutional security, order and discipline.

CONCLUSIONS

It is quite clear from the reasons outlined above that an issue of great importance is presented by this petition. The question of whether a prisoner facing disciplinary sanctions must be given access to evidence which is material to either guilt or punishment under this Court's decisions in *Brady* v. *Maryland* and *United States* v. *Agurs,* has not been previously presented to this Court. This issue is of substantial importance not only in the manner in which future prison disciplinary hearings are conducted but also in the manner in which prison facilities are administered.

In *Wolff* v. *McDonnel,* this Court carefully noted that its conclusion that certain procedural due process safeguards were required in prison disciplinary hearings was not "graven in stone." *Wolff* v. *McDonnel,* 418 U.S. at 571-72. This Court did, nevertheless, set forth constitutionally compelled minimum requirements of due process appropriate in disciplinary hearings finding such minimum requirements to be a "reasonable accomodation" between the interests of an inmate and the needs of an institution. *Wolff* v. *McDonnel,* 418 U.S. at 572. Petitioners respectfully submit that the procedure imposed on them in conducting a disciplinary hearing exceed the protections outlined in *Wolff,* and petitioners therefore respectfully request this Court to reverse the decision by the Court of Appeals to the extent it imposes procedural protections greater than afforded by *Wolff.*

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE

United States Court of Appeals

For the Seventh Circuit

No. 78-1889

WILLIAM CHAVIS,

Plaintiff-Appellant,

v.

CHARLES J. ROWE, Director, Illinois Department of Corrections, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 77-C-3589—**John Powers Crowley**, *Judge.*

ARGUED SEPTEMBER 19, 1980—DECIDED MARCH 11, 1981

Before FAIRCHILD, *Chief Judge,* SWYGERT, *Circuit Judge,* CAMPBELL, *Senior District Judge.**

FAIRCHILD, *Chief Judge.* Plaintiff William Chavis, an inmate at the Menard Correctional Center, filed suit under 42 U.S.C. § 1983 seeking monetary damages, injunctive and declaratory relief against certain officials of the Illinois Department of Corrections who allegedly violated his Eighth and Fourteenth Amendment rights. The district court dismissed his complaint for failure to state a claim. Because we find that plaintiff stated both an Eighth Amendment claim and a Fourteenth Amendment due process claim, we reverse and remand for further proceedings.

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* Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

I.

The facts alleged in plaintiff's complaint are as follows. On September 28, 1976, correctional officer Robert H. Sipp was stabbed as he was escorting a group of residents, including Chavis, at the Stateville Correctional Center in Joliet, Illinois. In his Inmate Violation Report filed September 30, 1976, Officer Sipp stated that he did not know his attacker. The report then states:

> Chavis was standing there looking with his hands in his pockets. When someone said "Kill the son of a bitch," inmate Chavis took his hands out of his pockets and moved toward me as if he was going to help the inmate. I broke and ran. There [were] other inmates moving with Chavis but [illegible]. I believe that inmate Chavis offered a further threat to [me] as I had already been [stabbed] twice by the inmate that attacked [me].

The Stateville Adjustment Committee held a hearing on the incident on October 2, 1976, after which Sipp's ticket was dismissed as improperly written.[1] Captain J. Boles, a correctional officer named as a defendant in this action and a member of the Adjustment Committee, then wrote a second Inmate Violation Report, dated October 9, 1976, charging Chavis with "assaulting an employee." The only other statement on this second report was: "Through investigation you have been identified as having stabbed Officer R. Sipp." Chavis was served on October 10, 1976 with Boles' report and with a notice stating he had the right to appear at the hearing, present a defense and to call witnesses.

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[1] Chavis alleged in his complaint that he was found not guilty. The Adjustment Committee Summary dated October 2, 1976 states "DISMISSED. Ticket is improperly written." The minutes of the meeting of the Administrative Review Board, Illinois Department of Corrections, dated February 4, 1977 state that Mr. Chavis was found "not guilty" by the Adjustment Committee.

The Adjustment Committee, composed of defendants J. M. Check, Chairman, E. M. Camy, a State Correctional Counselor, and Captain T. Wheaton, a correctional officer, heard Boles' charge against Chavis on October 12, 1976. Although Chavis did not present any witnesses, he did testify in his own behalf. He denied any involvement in the incident and informed the Committee of Sipp's report indicating that he had not stabbed Sipp. Without telling Chavis about the information or witnesses relied on by Boles, the Committee found Chavis guilty and ordered him transferred to segregation, demoted to "C grade" and deprived of two years of statutory good time. The Committee's written findings, in their entirety, were: "We recognize and consider the resident[']s statement[,] however[,] we accept the reporting officer[']s charges." Chavis was then sent to segregation, where, he alleges, he was confined with four other men in a seven by five foot cell.

Chavis appealed the findings of the second Adjustment Committee to the Stateville Inquiry Board, which reported on November 1, 1976, that it "found no error in the processing of the disciplinary violation report . . . and no basis for [Chavis'] grievance." He then appealed to the Administrative Review Board of the Illinois Department of Corrections (hereinafter the "Review Board"). They met to consider Chavis' appeal and to interview Chavis on February 4, 1977.

The Review Board members discussed the investigation of the stabbing incident with Assistant Warden Kapture, who provided them with a copy of the investigation report. This report, which was not provided to Chavis during the Adjustment Committee proceedings, contained the results of a polygraph examination administered to one of the residents providing information about the stabbing. The examination indicated that the resident was telling the truth when he identified another resident as having stabbed Officer Sipp. The Review Board concluded that the investigation report did not substantiate the allegations of Boles' disciplinary report written on

October 9, 1976. The Review Board therefore recommended that the disciplinary report be expunged from all institutional records, that Chavis be released from segregation and restored to grade, and that his two years of statutory good time be restored. Defendant Rowe, who was then Acting Director of the Department, ordered that these actions be taken, and further ordered that Chavis be transferred to Menard Correctional Center no later than March 31, 1977.

On September 26, 1977, Chavis filed a § 1983 *pro se* complaint alleging: (1) a denial of his right to confront his accuser and present evidence in his own behalf at the October 12, 1976 disciplinary hearing; (2) a denial of his Fourteenth Amendment due process right by not being given the investigation report relied on by the Adjustment Committee; (3) a denial of his Eighth and Fourteenth Amendment rights by defendants' reliance on an investigation report which did not support their finding of guilty or their imposition of sanctions; (4) a denial of his Fourteenth Amendment due process rights in being transferred to Menard without being given a hearing or being informed of the reasons for the transfer; (5) a denial of his Eighth Amendment right to be free from cruel and unusual punishment in being confined for six months in a five by seven cell with four other men, without adequate bedding, lighting, food, toilet facilities, and without access to showers, yard, legal materials, medical and dental care, while he was appealing the Adjustment Committee's finding of guilty. Chavis sought declaratory relief, a preliminary injunction ordering an immediate hearing on his transfer to Menard, $25,000 in compensatory damages and $20,000 in punitive damages, against the defendants, respectively.

Defendants Boles, Check and Wheaton filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief could be granted. The district court, by Order and Memorandum Opinion dated May 31, 1978, granted the motion to

dismiss in favor of all named defendants. It found that Chavis was not denied due process at his October 12, 1976 hearing. It further found that the Review Board's action in vacating the Adjustment Committee's finding of guilt mooted Chavis' claim that the guilty verdict was not justified by substantial evidence. Furthermore, Chavis was not entitled to monetary relief for the time he spent in segregation, the court said, because he failed to allege bad faith by the correctional officers. Finally, the court held that he had no right, under either the Constitution or Illinois law, to a hearing prior to transfer from one state institution to another.

II. *The Due Process Claims*

A.

Three of Chavis' four due process claims stem from his October 12, 1976 disciplinary hearing: a denial of his right to confront his accuser and present evidence in his own behalf; a denial of his right to be given the investigatory report relied on by the Adjustment Committee; and a denial of his right to be punished only upon a finding of substantial evidence, and to be given written reasons for the punishment. Chavis seeks declaratory relief to the effect that defendants' actions were an unconstitutional deprivation of his due process rights, and damages against the defendants Boles, Check, Camy and Wheaton, all of whom were members of the Adjustment Committee.[2] The district court, relying on *Wolff* v. *McDonnell,*

[2] Chavis, in his supplemental brief to this court, agrees with the district court's dismissal of these claims against defendant Rowe, the Director of the Illinois Department of Corrections, as there is no evidence of his personal involvement in the disciplinary hearing matter until his approval of its reversal by the Review Board. *See McKinnon v. Patterson,* 568 F.2d 930, 934 (2d Cir. 1977), *cert. denied,* 434 U.S. 1087 (1978).

418 U.S. 539 (1974) and *Baxter* v. *Palmigiano*, 425 U.S. 308 (1976), stated that Chavis received the full extent of procedural due process available to him in a prison hearing.[3]

We find that Chavis was accorded due process only to the extent that he was given proper written notice of the charges against him and offered the opportunity to present witnesses. Beyond this, however, the Adjustment Committee's procedures did not meet the minimum due process standards required by *Wolff*.

1.

In his complaint, Chavis alleged that the Adjustment Committee's failure to disclose to him the investigatory report deprived him of due process in violation of the Fourteenth Amendment. This investigatory report contained statements by a witness to the incident which exculpated Chavis from stabbing Officer Sipp. Indeed, the statements so outweighed any other evidence pertaining to Chavis' involvement in the incident that after the Review Board considered the report, it concluded that there was no evidence to substantiate the disciplinary charge against him.

If Chavis were being tried in a criminal prosecution, this allegation would present a claim based on *Brady* v. *Maryland*, 373 U.S. 83 (1963) and *United States* v. *Agurs*, 427 U.S. 97 (1976), which hold that suppression by the prosecution of evidence clearly favorable to an accused violates due process where the evidence is material either to guilt or punishment, even if it was not specifically requested by the defendant. Evidence is material "if [it] creates a reasonable doubt that did not otherwise exist." *Id.* at 112. This means:

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[3] *Wolff v. McDonnell* sets forth the minimum due process requirements for prison disciplinary proceedings when the prisoner has been charged with serious misconduct which could result in loss of good time credits, punitive segregation, or which might also be punishable in state criminal proceedings. *Baxter* v. *Palmigiano, supra*, at 323.

> If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial. On the other hand, if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.

Id. at 112-13.

The investigatory report at issue here meets the materiality standard as articulated by the Supreme Court in *Agurs.* Regardless of the standard of proof required for a finding of guilt in prison disciplinary proceedings, there was some doubt of Chavis' guilt, based on Officer Sipp's earlier report which stated that Chavis had his hands in his pockets during the incident. The other inmate's statement, which indicated that someone other than Chavis stabbed Sipp, should have made Chavis' guilt appear even more unlikely.

It can be argued that there is no *Brady* analogy because the fact-finder in this case, the Committee, was given the report and could consider it in reaching its conclusion. After all, one of the aims of the *Brady* rule is to insure that the trier of fact considers *all* relevant evidence in reaching a conclusion as to guilt or innocence. But *Brady* is also based on the right of the defendant to prepare the best defense he can and bring to the court's attention any evidence helpful to his case. *McDonald* v. *State of Illinois,* 557 F.2d 596, 603 (7th Cir.), *cert. denied,* 434 U.S. 966 (1977). Here, Chavis was deprived of his ability to make his own use of this exculpatory evidence before it was given to the fact-finders. And although the Committee ostensibly had the other inmate's statement before it, it is questionable whether its members even considered it because they failed to mention it in their written findings. If Chavis had been given the material, and argued it to the Committee, it may have been forced to consider the material more seriously. Given the dearth of evidence on which the Committee made its

finding of guilt, a forceful argument by Chavis based on the other inmate's statement could have resulted in a finding of not guilty. We therefore cannot say that defendants' failure to disclose the statement was immaterial or harmless error.[4]

The reasons in favor of applying a *Brady*-type rule to prison disciplinary proceedings are obvious. *Wolff* v. *McDonnell,* however, requires consideration of whether imposing such a rule will adversely affect the state's interests in maintaining institutional peace and security. 418 U.S. at 566, 561-63. For example, although the right to present evidence is basic, the Supreme Court noted that "the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution." *Id.* at 566. Prison officials are therefore given broad discretion in balancing these interests, with only limited review by the courts. *Hayes* v. *Walker,* 555 F.2d 625, 629 (7th Cir.), *cert. denied,* 434 U.S. 959 (1977) (*Hayes I*). There must be enough support in the record for the officials' decision, however, so that a court can review for abuse of discretion. *Id.* at 630. Similarly, the Supreme Court left to the discretion of prison officials the decision whether to allow cross examination of adverse witnesses. *Wolff, supra* at 568.

Turning now to the *Brady* situation, we see great importance in permitting the inmate to know of exculpatory evidence, and little reason to think that such disclosure would lead to prison disruption or danger. Conceivably there may be situations in which prison officials reasonably fear that disclosure of

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[4] *Cf. United States v. Alberico,* 604 F.2d 1315, 1319 (10th Cir.), *cert. denied,* 444 U.S. 992 (1979) (Defendant's *Brady* right was not affected because the previously undisclosed identity of an undercover FBI agent was disclosed to defendant during trial, thereby enabling defendant to argue entrapment to the jury.).

the entire report, certain names of other prisoners, or the like, may cause disruption or danger. At the complaint stage, however, there is no reason to presume that type of situation, nor any reason why at least the substance of the other inmate's statement could not safely have been disclosed to Chavis.

In judging Chavis' complaint, it appears that simple fair play required disclosure to him of the exculpatory material *or its substance,* and that failure to disclose resulted in a miscarriage of justice at the committee stage. We conclude that the complaint stated a due process claim in this respect.

2.

The Adjustment Committee violated another of Chavis' due process rights by failing to provide Chavis with a written statement as to the evidence relied on and reasons for the disciplinary action. *Wolff* v. *McDonnell, supra* at 564-65; *Hayes I, supra* at 633. The Adjustment Committee's report at the conclusion of the hearing simply said: "We recognize and consider the resident[']s statement[,] however[,] we accept the reporting officer[']s charges." It did not mention what evidence the reporting officer relied on, the investigatory report containing exculpatory evidence, or Officer Sipp's earlier report. It gave no clear indication of why the reporting officer was to be believed rather than Chavis or Officer Sipp. The statement thus falls far short of *Wolff's* requirement that a written record of the proceedings be provided in order to protect the inmate against collateral consequences and to insure that prison officials acted fairly. The Supreme Court in *Wolff* stated:

> [T]he provision of a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause to or defending himself from others.

Id. at 565.

This court, in discussing the *Wolff* requirement for a written statement, added that such a statement also protected the inmate's substantive due process right not to be found guilty except by an appropriate quantum of evidence. *Aikens* v. *Lash*, 514 F.2d 55, 60 (7th Cir. 1975), *vacated and remanded on other grounds*, 425 U.S. 974 (1976), *reinstated as modified*, 547 F.2d 372 (1976). *See Thompson* v. *City of Louisville*, 362 U.S. 199, 206 (1960); *Wilwording* v. *Swenson*, 502 F.2d 844, 851 (8th Cir. 1974), *cert. denied*, 420 U.S. 912 (1975); *Gomes* v. *Travisono*, 510 F.2d 537, 540 (1st Cir. 1974). Without a detailed statement of the Committee's findings and conclusions, a reviewing court (or agency) cannot determine whether the finding of guilt was based on substantial evidence or whether it was sufficiently arbitrary so as to be a denial of the inmate's due process rights. *Aikens* v. *Lash*, *supra* at 60-61.[5]

That the Adjustment Committee's statement was inadequate can be seen from the Review Board's conclusion, after making detailed, written findings of fact, that the Adjustment

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[5] The statement also violates regulations of the Illinois Department of Corrections, adopted shortly after the Supreme Court's decision in *Wolff*, which provide:

> The resident must be given a written statement, signed by the Chairman, of the evidence relied upon by the majority of the committee and the specific disciplinary action taken, as well as the reasons for the disciplinary action. If personal or institutional safety is involved, this statement may properly exclude certain items of evidence, but the statement should then indicate the fact of the omission. The statement of decision should include, wherever appropriate, a short explanation of why information purporting to exonerate the resident was discounted, if it was discounted. It will not be sufficient for the committee's decision to simply adopt and copy the exact wording of the Resident Information Report. . . .

State of Illinois Department of Corrections, Administrative Regulation No. 804, Section II-B(9), cited in *Burbank v. Twomey*, 520 F.2d 744, 747 n.6 (7th Cir. 1975).

Committee's holding that Chavis was guilty of stabbing Officer Sipp was not substantiated by the facts. By this time, Chavis had spent five months in segregation. Had the Adjustment Committee made detailed findings to begin with, Chavis may never have been sent to segregation, or, the Inquiry Board may have been compelled to reverse the Committee's decision upon its first review. We therefore hold that in failing to provide Chavis with a written statement giving facts relied on and reasons for the conclusions reached, defendants violated Chavis' due process rights under Wolff, and also his right not to be found guilty except by an appropriate quantum of evidence.

3.

The district court held that Chavis' due process claim was mooted by the Review Board's vacation of that finding and its expungement from his record. It further stated that even if his claim for damages for the time he spent in segregation was not moot, he could not be awarded damages in this § 1983 action unless his complaint included the allegation that defendants acted in bad faith. It is true that the Review Board cleared Chavis' record of any disabilities which would impair his opportunities for parole and other benefits. Nonetheless, we hold Chavis stated a live claim for damages against defendants, based on the time he spent in segregation, even though his complaint did not specifically allege defendants' bad faith.

While defendants, as state prison officials, enjoy a qualified immunity from damages in § 1983 actions, *Procunier* v. *Navarette,* 434 U.S. 555, 561 (1978), this court has not required plaintiffs affirmatively to allege bad faith by the state defendants in order to state a claim under § 1983. *Tritsis* v. *Backer,* 501 F.2d 1021, 1022-23 (7th Cir. 1974). Rather, this court has treated the question of good faith as an affirmative defense which must be pleaded by the defendant in a § 1983 action. *Id.* Furthermore, the Supreme Court recently held that, to state a

claim under § 1983, plaintiff need only allege that some person, acting under color of state or territorial law, deprived him of a federal right. *Gomez* v. *Toledo*, 446 U.S. 635, 640 (1980). Chavis' complaint met these two requirements and states a valid § 1983 claim. Defendants must therefore prove that they acted in good faith before they are granted qualified immunity.

Under the rule of *Wood* v. *Strickland*, 420 U.S. 308, 322 (1975), as applied to prison officials in *Procunier* v. *Navarette*, *supra*, defendants are deprived of a good faith defense if: (1) the constitutional right they allegedly violated was clearly established at the time of their challenged conduct; (2) they knew or should have known of that right; and (3) they knew or should have known that their conduct violated the constitutional norm. *Procunier* v. *Navarette*, *supra* at 562. After studying the record before us, we conclude that defendants cannot be granted immunity for their failure to provide Chavis with an adequate written statement at the conclusion of the disciplinary hearing because they will be unable to meet the three-prong objective test for raising a good faith defense.

First of all, the due process right defendants violated by failing to provide Chavis with a written statement setting forth the facts relied on and the reasons for the conclusions reached was clearly established at the time of Chavis' hearing. The Supreme Court mandated such a statement in *Wolff* v. *McDonnell*, decided in 1974, and this court had consistently enforced this requirement. *See Hayes I*, *supra*, 555 F.2d at 631; *Aikens* v. *Lash*, *supra* at 60. The first part of the *Wood* v. *Strickland* objective test for depriving prison officials of a good faith defense is thus satisfied.

The second prong of the test is met because defendants knew, or should have known of this right by the time of Chavis' hearing in 1976. Indeed, Department of Corrections Regulations promulgated shortly after the *Wolff* decision provide that a prisoner be given a written statement of the evidence

relied on and the reasons for the disciplinary action.[6] It is no defense for defendants to claim, two years after *Wolff* was decided, that they were unaware of this right, for we have previously charged prison officials with "be[ing] sensitive and alert to the protections afforded prisoners by the developing judicial scrutiny of prison conditions and practices." *Little* v. *Walker,* 552 F.2d 193, 197 (7th Cir. 1977), *cert. denied,* 435 U.S. 932 (1978), citing *Knell* v. *Bensinger,* 522 F.2d 720, 725 (7th Cir. 1975). In other words, "a prison official may not take solace in ostrichism." *Little* v. *Walker, supra* at 197. They are charged with knowledge of their own prison regulations, and in this instance, those regulations provide that a post hearing statement is insufficient if it simply adopts the investigator's report.

Finally, given the regulations, and this court's previous statements regarding the importance of a written statement setting out all the facts relied on and the reasons for the conclusions reached, defendants must have known that their meager statement did not satisfy the constitutional norm. The third prong of the *Wood* v. *Strickland* test is therefore fulfilled and defendants cannot claim immunity from damages for this due process violation. *See Mary and Crystal* v. *Ramsden,* Nos. 78-1954 & 78-1955, slip op. at 16 (7th Cir., Nov. 21, 1980). To hold otherwise would be to encourage official ignorance of the law. *See Hayes* v. *Thompson,* No. 79-2347, slip. op. at 23 (7th Cir., Dec. 18, 1980) (*Hayes II*) (Swygert, J., concurring and dissenting).[7] Defendants' failure to provide an adequate writ-

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[6] See note 5, *supra.*

[7] In *Hayes II, supra,* this court upheld the district court's finding that the Institutional Adjustment Committee could, in good faith, believe that their statement as to the facts relied on and reasons for conclusions reached in Hayes' prison disciplinary proceeding met the *Wolff v. McDonnell* requirement. That situation is distinguishable from the present one because Hayes, unlike Chavis, was provided with a full transcript of the proceedings, including the summary of the investigator's report. *Hayes II, supra* at 14-17.

ten statement is all the more grievous in this case where they had evidence tending to show Chavis was not guilty. Had they provided a proper written statement they would have been forced to consider this exculpatory evidence which could then quite reasonably have resulted in their absolving Chavis of guilt. Instead, defendants ignored their constitutional duty, and Chavis spent six months in segregation for an offense it appears he did not commit.

On the other hand, we are unable to apply the three prong objective test to defendants' failure to inform Chavis of the substance of the investigatory report containing exculpatory evidence because we cannot fairly say that the constitutional right to exculpatory evidence in a prison disciplinary proceeding was clearly established at the time of Chavis' hearing. We come to this conclusion reluctantly because it seems to us that common sense alone should have told defendants that their failure to provide Chavis with the substance of this report was fundamentally unfair. Nevertheless, on remand to the district court, defendants must be given the opportunity to prove that they acted in "good-faith fulfillment of their responsibilities and within the bounds of reason under all the circumstances." *Wood* v. *Strickland, supra* at 321. Defendants' job in this situation was to provide Chavis with the fairest hearing possible within the context of maintaining institutional security. On the present record we can find no reason why institutional interests would have been harmed by providing Chavis with at least the substance of the investigatory report.

B.

Chavis' fourth due process claim stems from defendant Rowe's order to transfer Chavis from Stateville to Menard. Defendant Rowe simply appended to his concurrence in the Review Board's February 4, 1977 decision an order transferring Chavis to Menard Correctional Center no later than March 31, 1977. This order gave no reason for the transfer, nor did it state that Chavis would be given a hearing regarding the action.

Chavis alleged that this transfer, which appeared to him to be for punitive reasons, violated minimal due process requirements because he was not given a transfer hearing and informed of the reasons for the transfer. He further alleged that the transfer interfered with his rehabilitation and jeopardized his parole opportunities. He sought injunctive relief ordering an immediate hearing on his transfer. The district court, relying on *Meachum* v. *Fano,* 427 U.S. 215 (1976), said that Chavis had no right to a hearing prior to transfer from one institution to another within the state system unless state law or practice conditioned transfer on misbehavior or other specified events. Because it found no Illinois statutes attaching conditions to the state's authority to transfer inmates, the district court held that it was precluded from considering the circumstances surrounding Chavis' transfer. Court-appointed counsel for Chavis, in their supplemental brief filed in this court, conceded this claim, (Supp. brief p. 28 n.38) but we have examined two aspects: (i) whether the Illinois regulations regarding transfer of inmates establish a right to remain in a particular institution; and (ii) whether Chavis' allegation that he was transferred for punitive purposes states a claim.

Meachum v. *Fano* held that immates have no liberty interest in remaining in any particular institution unless state law, practice or procedure conditions transfer on the occurrence of specified events, such as misconduct. *Id.* at 228. Illinois Department of Corrections regulations provide for a hearing by the Institutional Assignment Committee whenever a resident requests an institutional transfer or institutional staff recommends the transfer of a resident.[8] These regulations, which

[8] State of Illinois Department of Corrections, Administrative Regulation No. AR 819, Section II-B, reprinted in *Stringer v. Rowe,* 616 F.2d 993, app. 1005(7th Cir. 1980). The Assignment Committee is to review a report prepared by the Clinical Services Supervisor regarding the proposed transfer and the inmate's activities at the facility, and to check with the Medical Unit Administrator to ensure that the inmate's medical needs are being taken care of. Any transfer recommendation made by the Assignment Committee must be approved by the Chief Administrative Officer, and the Transfer Coordinator then makes the final decision regarding the inmate's placement.

require consideration of various factors prior to transferring a prisoner, establish procedures for the exercise of discretion, but they do not limit the decision to transfer to any particular reason. Without such a limitation, the regulations do not recognize any right on the part of the prisoner to serve in a particular institution. *Id.*

In his complaint, Chavis alleged that his transfer may have been for punitive reasons because he was placed in segregation upon his arrival at Menard, although he was released shortly thereafter. This temporary assignment to segregation on arrival may well have been incidental to transfer rather than punitive. If Chavis wishes to pursue the claim that it was punitive, leave is given to amend his complaint on remand, for if he can establish that his transfer was disciplinary, he has stated a valid claim. *Durso* v. *Rowe,* 579 F.2d 1365, 1369 n.1 (7th Cir. 1978), *cert denied,* 439 U.S. 1121 (1979).

III. *The Eighth Amendment Claims*

Chavis alleged that the conditions to which he was exposed during his nearly six months in segregation amounted to cruel and unusual punishment in violation of the Eighth Amendment. He alleged that while in segregation, he was confined to a cell measuring 5 feet by 7 feet, along with four other residents, and received inadequate bedding, light, toilet facilities, showers, access to legal materials, medical and dental care and food. He requested declaratory relief to the effect that such practices were unconstitutional, and damages. The district court appears to have overlooked this allegation in its Order and Memorandum Opinion dismissing Chavis' complaint.[9]

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[9] Chavis' failure to name a particular defendant in connection with his Eighth Amendment allegation is no bar to this claim. *Maclin* v. *Paulson,* 627 F.2d 83, 87-88 (7th Cir. 1980) (Instead of dismissing a *pro se* complaint for failure to identify certain unnamed defendants, the district court should have ordered their disclosure or permitted plaintiff to obtain their identity through discovery.). Direct individual responsibility for the conditions of segregation imposed on plaintiff must have

Footnote continued on following page.

Confinement in a prison or in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards, which are made applicable to the states by the Fourteenth Amendment. *Hutto* v. *Finney,* 437 U.S. 678, 685 (1978). Thus, Chavis' six month confinement in segregation is in violation of the Eighth Amendment if the conditions of that confinement transgressed today's "broad and idealistic concepts of dignity, civilized standards, humanity, and decency." *Id.* at 685 (citations omitted). This court recently described the test for a § 1983 action charging prison officials with violating the Eighth Amendment as requiring plaintiff to show that prison officials intentionally inflicted excessive or grossly severe punishment on him or that the officials knowingly maintained conditions so harsh as to shock the general conscience. *Stringer* v. *Rowe,* 616 F.2d 993, 998 (7th Cir. 1980).

Chavis' allegation that he was confined for six months with four other men in a cell measuring 5 feet by 7 feet states an Eighth Amendment transgression as such confinement, if true, shocks the general conscience. Courts have found conditions of overcrowding to be *per se* unconstitutional because the purpose of the prohibition against cruel and unusual punishment is to protect and safeguard a prison inmate from an environment where degeneration is probable and self-improvement unlikely due to conditions which inflict needless mental or physical suffering. *Battle* v. *Anderson,* 564 F.2d 388, 393 (10th Cir. 1977). Thus, the Tenth Circuit has held that housing two men in "a little 35-40 square foot 'cubby hole'. . . . offends the contemporary standards of human decency, *id.* at 395, and has ordered the Oklahoma Department of Corrections to provide each inmate with a minimum of 60 square feet. *Id.* at 397. And in *Hutto* v. *Finney,* the Supreme Court affirmed the district court's finding that the conditions of "punitive isolation" in the

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Footnote continued from preceding page.

rested on an official at a relatively high administrative level. If defendant Rowe disclaims knowledge and responsibility, he can readily demonstrate who would bear responsibility for whatever conditions existed.

Arkansas prisons were cruel and unusual. There, an average of 4, and sometimes as many as 10 or 11, prisoners were crowded into windowless 8 by 10 foot cells containing no furniture other than a source of water and a toilet that could be flushed only from outside the cell. *Hutto* v. *Finney, supra* at 682. Chavis' allegations of overcrowding are sufficiently similar to those found in *Battle* v. *Anderson* and *Hutto* v. *Finney,* to state an Eighth Amendment claim.

Defendants argue that the overcrowding alleged by Chavis to have occurred during his time in segregation is not cruel and unusual because it was "temporary." Defendants forget that Chavis was sentenced to an indefinite period in segregation and actually spent almost six months there before the Review Board ordered him released. Thus, the conditions alleged by Chavis are far more serious than those suffered by the plaintiff in *Haines* v. *Kerner,* 492 F.2d 937 (7th Cir. 1974), relied on by defendants.[10] Not only did Chavis allege he was confined in a smaller cell for a much longer period of time with more men than was plaintiff in *Haines* v. *Kerner,* but the conditions in the latter case were judged by 1968 standards, *id.* at 942, and Chavis' allegations are to be measured against prison crowding found to be cruel and unusual in 1976. *See Hutto* v. *Finney, supra* at 685. And by 1976, some courts had held that the Constitution required that each inmate be provided with a minimum of sixty square feet.[11]

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[10] In *Haines v. Kerner, supra,* this court held that confinement in an eight by sixteen foot "isolation cell" for 15 days, with one other inmate for ten days, and three or four inmates for the last five days was not unconstitutional.

[11] *See Battle v. Anderson, supra* at 395, 401. While the Supreme Court has recently criticized that the practice of establishing a constitutional right to a minimum number of square feet per prisoner, *see Bell v. Wolfish,* 441 U.S. 520, 543 n.27 (1979), the Court has recognized that at some point, overcrowding does state an Eighth Amendment, *Hutto v. Finney, supra* at 682 or a due process claim. *Bell v. Wolfish, supra* at 542.

Chavis states a further Eighth Amendment claim in his allegation that while he was in segregation, he received inadequate bedding, light, toilet facilities, showers, access to legal materials, medical and dental care and food. Defendants, relying on *Adams* v. *Pate,* 445 F.2d 105 (7th Cir. 1971), argue that these allegations are too conclusory to state a claim under § 1983 for deprivation of rights under the Eighth Amendment. In *Adams* v. *Pate,* this court referred to the portion of a complaint alleging "unsanitary living conditions" as being too conclusory because "it is not accompanied by specific allegations, which, if proved, would establish . . . cruel or unusual punishment within the purview . . . of the Eighth Amendment." *Id.* at 107. Here, Chavis has alleged conditions which, if proved, would state an Eighth Amendment violation. This court has directed awards of damages for similar lists of conditions, *Chapman* v. *Pickett,* 586 F.2d 22, 28 (7th Cir. 1978); *Buise* v. *Hudkins,* 584 F.2d 223, 233 (7th Cir. 1978), *cert. denied.* 440 U.S. 916 (1979),[12] and those cases preclude a summary dismissal in the instant case.

The judgment of the district court is therefore reversed and the cause is remanded for proceedings consistent with this opinion. Circuit Rule 18 shall apply on remand.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[12] In *Chapman, supra,* plaintiff alleged that while in segregation, he suffered lack of exercise, lack of society with other inmates or family and friends, and lack of work or vocational training. *Id.* at 28. Plaintiff in *Buise* merely alleged that his room at the State Farm "would be almost like having an apartment in free society compared to what he had at the prison," *id.* at 233, which this court said was sufficient for stating damages for being transferred to the prison.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM CHAVIS, *Plaintiff,*	
vs.	No. 77 C 3589
CHARLES J. ROWE, et al., *Defendants.*	

JUDGMENT ORDER

John Powers Crowley, District Judge

In accordance with the memorandum opinion and order filed in this case on this date, judgment by dismissal is entered in favor of defendants Charles J. Rowe, J. Boles, J. M. Check, E. M. Camy, and T. Wheaton and against the plaintiff, William Chavis.

/s/ John Powers Crowley
John Powers Crowley
United States District Judge

DATED: May 31, 1978.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM CHAVIS,
Plaintiff,

vs.

CHARLES J. ROWE, et al.,
Defendants.

No. 77 C 3589

MEMORANDUM OPINION AND ORDER

John Powers Crowley, District Judge

The plaintiff is in the custody of the Illinois Department of Corrections, and in this civil rights action brought under 42 U. S. C. § 1983 he seeks damages as well as injunctive relief which would provide him with an immediate hearing both on reasons for his transfer from the prison at Stateville to that at Menard and also on his request for re-transfer to Stateville. Defendants in this suit are Charles Rowe, the Director of the Illinois Department of Corrections; and Correctional Officers Boles, Check, Camy and Wheaton.[1]

The pro se complaint must be liberally construed in accordance with *Haines* v. *Kerner,* 404 U. S. 519 (1971), during the consideration by this Court of the pending motion by defendants for dismissal for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Because of our disposition of this motion addressed to the complaint itself, we deny the motions of the plaintiff for judgment instanter on the preliminary injunction, for dismissal of the defendants'

[1] Boles prepared the disciplinary report of October 9, 1976, and the other three officers comprised the Adjustment Committee who ruled on that report.

motion to dismiss, for leave to amend the complaint, for motion to compel answers to interrogatories, and for default judgment.[2]

The plaintiff's claim grows out of a stabbing of a correctional officer, Mr. Robert Sipp, at Stateville on September 28, 1976, as he was escorting a group of residents. Officer Sipp wrote a discriplinary report on Mr. Chavis on September 30, 1976, indicating that Mr. Chavis was among the group of residents and appeared to make a threatening advance after the initial stabbing; the Adjustment Committee found Mr. Chavis not guilty of this charge at a hearing on October 2, 1976. However, on October 9, 1976, a further disciplinary report was filed by Officer Boles stating that investigations had identified Chavis as the person who had committed the stabbing; on October 12, 1976, Mr. Chavis was found guilty, placed in segregation, demoted to "C" grade, and was stripped of two years statutory good time. The plaintiff filed a grievance based on this finding and the Stateville Inquiry Board after a personal interview on November 1, 1976, found no error in the procedures or conclusion. On appeal of this decision on February 4, 1977, the Administrative Review Board of the Illinois Department of Corrections found that the investigatory report did not support the disciplinary charges of October 9, 1976; therefore, the finding of guilty and all of its related effects were expunged from Mr. Chavis' record. With the written concurrence of Charles Rowe, Director of the Department of Corrections, it was ordered that Chavis be administratively transferred to Menard Correctional Center before March 31, 1977.

Based on these circumstances, the plaintiff alleges two specific deprivations of civil rights. First, he claims that he was denied due process at the hearing before the Adjustment Committee on October 12, 1976. He asserts that he should

[2] The plaintiff has sent numerous letters to the Court detailing his current experiences at Menard. These are not within our jurisdiction for current consideration or resolution.

have been given at that time a copy of the investigative report on which the Committee relied, that he should have been given an opportunity to confront his accusers or to present evidence on his own behalf, and that the finding of guilt entered by the Committee was not supported by substantial evidence.

The relevant standards governing the procedural due process which must be afforded in prison disciplinary hearings are set forth in *Wolff* v. *McDonnell*, 418 U. S. 539 (1974). The essential elements of those procedures are advance written notice of the disciplinary charge and a written statement of the decision and the reasons supporting it. The opportunity to call witnesses must be balanced against the needs for internal prison order, and production of investigative reports is sometimes blocked by personal and institutional safety needs. In this case, the defendants contend that Mr. Chavis was given the full measure of due process to which he was entitled under the circumstances. Although given an opportunity to make a written request for witnesses to testify in his behalf, he did not do so; nor did he make an oral request for witnesses at the time of the hearing. He was given time to personally refute the charges against him, and he did deny them completely. Defendants further state that the investigative report identified other inmates who assisted in the investigation and that production of the report would have endangered their personal safety; that decision to exclude the investigative report is within the guidelines set in *Wolff* v. *McDonnell*, 418 U. S. 539, 565 (1974) and Mr. Chavis was not unjustly deprived of information contained in that document.

Nor was Mr. Chavis entitled to confront his accusers, cross-examine the witnesses against him, or be represented by counsel in this factual situation. Those rights attach only when an inmate is also subject to *currently pending* state criminal charges which are founded on the same incident which is the subject of the prison disciplinary hearing. *Baxter* v. *Palmigiano*, 425 U.S. 308 (1976).

Plaintiff's final argument that the guilty finding entered against him was not supported by substantial evidence is mooted by the vacation of that finding and all the punitive effects which flowed from it. This is an instance, not where the prison grievance procedures thwarted the resolution of a problem, but where the review process within the correctional system was the actual avenue through which his rights were vindicated. His record is thus free of disabilities which would impair his opportunities for parole and other benefits. However, the fact remains that he did spend a substantial period of time in the segregation unit, and the question of damages as a result of that confinement must be resolved. "There is no doubt that correctional officials are entitled to a qualified immunity from damage claims brought under § 1983 if they reasonably believed in good faith that their conduct was lawful, even though it was not. *Procunier* v. *Navarette,* No. 76-446 ____ U.S. ____ (Feb. 22, 1978)." *Ware* v. *Heyne,* No. 77-1880, slip opinion at p. 5, ____ F. 2d ____ (7th Cir., April 5, 1978). In light of this holding and because the complaint contains no allegations that the actions of the correctional officials were taken in bad faith or for the purposes of harassment, no relief is available to the plaintiff. In all respects he received the full extent of the procedural due process available to him in a prison disciplinary hearing.[3]

Secondly, plaintiff claims that he was denied his civil rights when he was transferred to Menard without a hearing. The Supreme Court held in *Meachum* v. *Fano,* 427 U.S. 215 (1976) that unless state law or practice conditions transfer because of misbehavior or other specified events, inmates have no right to a hearing prior to transfer to another institution within the state system. The Illinois statutes do not attach any express condi-

[3] The recent holding in *Carey v. Piphus,* 46 LW 4225, ____ U.S. ____ (March 21, 1978) that a *denial* of procedural due process in a school disciplinary hearing may be actionable for nominal damages without proof of actual injury is completely inapplicable to the facts of this case.

tions to the authority of the state to transfer inmates (Ill. Rev. Stat., Ch. 38, § 1003-8-4), and no limiting conditions have been brought to the attention of the Court. Thus, this Court is precluded from consideration of the circumstances surrounding this "administrative transfer."

Because the allegations of this complaint do not state any claim upon which relief can be granted, the motion of defendants Boles, Check and Wheaton for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is granted and extended to include all named defendants.

/s/ John Powers Crowley
John Powers Crowley
United States District Judge

DATED: May 31, 1978.

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No. 80-2082

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

J. BOLES, J. M. CHECK,
E. M. CAMY and T. WHEATON,

Petitioners,

vs.

WILLIAM CHAVIS,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 46.1 of the Rules of this Court, motion is hereby made that the Respondent be allowed to proceed in forma pauperis before this Court.

Respondent sought and was granted leave to proceed in forma pauperis before the United States District Court and the United States Court of Appeals. Respondent was represented in the Court below by counsel appointed pursuant to the provisions of the Criminal Justice Act of 1964, as amended, Title 18, United States Code, Section 3006A.

Respectfully submitted,

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the suppression by a prison disciplinary board of exculpatory evidence material to the innocence of a prisoner in a disciplinary hearing is violative of the due process rights of the inmate.

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NO. 80-2082

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

J. BOLES, J. M. CHECK,
E. M. CAMY and R. WHEATON,

Petitioners,

vs.

WILLIAM CHAVIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent respectfully prays that the petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit be denied.

STATEMENT OF THE CASE

Respondent William Chavis, a convicted state prisoner in the custody of the Illinois Department of Corrections, filed an action in the United States District Court for the Northern District of Illinois seeking monetary damages, injunctive and declaratory relief pursuant to the provisions of Title 42, United States Code, Section 1983. The complaint arises from a series of events beginning on September 28, 1976, in the Stateville Correctional Center at

Joliet, Illinois where Chavis was incarcerated. Correctional Officer Robert H. Sipp was stabbed on that date while escorting a group of residents within the institution. Chavis was a member of the group being escorted by Officer Sipp and was named in an Inmate Violation Report authored by Sipp on September 30, 1976.

Sipp stated in the Violation Report that he was attacked and stabbed by an unknown inmate. After the stabbing, he saw Chavis standing with his hands in his pockets. Sipp heard somebody say, "Kill the son of a bitch" and observed Chavis take his hands out of his pockets and move toward the officer. As other inmates moved toward him, Sipp turned and ran. Sipp's Violation Report concluded with the allegation that when he saw Chavis, Sipp "already had been [stabbed] twice by the inmate that attacked [me]."

The Stateville Adjustment Committee held a hearing on October 2, 1976, and dismissed Sipp's report as improperly written. Petitioner, Captain J. Boles, a member of the Adjustment Committee reviewing Sipp's allegation, wrote a second Inmate Violation Report on October 9, 1976, relating to the same stabbing incident. It charged Chavis with "assaulting an employee." Further describing the offense, Boles alleged in the Violation Report that, "[t]hrough investigation you have been identified as having stabbed Officer R. Sipp."

A disciplinary hearing was held on October 12, 1976 concerning the Boles' Violation Report. The Adjustment Committee was composed of Petitioners J. M. Check, Chairman of the Committee, E. M. Camy, a State Correctional Counselor, and Captain T. Wheaton, a Correctional Officer. Chavis informed the Committee of the Violation Report previously written by Officer Sipp which indicated that Chavis was not the person who had stabbed him. Chavis also denied any

involvement in the incident. The Committee found Chavis guilty and ordered him stripped of two years of statutory good time, transferred to segregation and demoted to "C Grade." The Committee stated in handwritten findings that it accepted "the investigative report as being true." In typed findings, the Committee identified the evidence upon which it relied as follows: "We recognize and consider resident[']s statement[,] however[,] we accept the reporting officer[']s charges." Accordingly, Chavis was immediately transferred from the general prison population to the segregation unit where he shared a cell with four other inmates.

On November 1, 1976, the Stateville Inquiry Board, in response to a grievance filed by Chavis, found no error in the disciplinary proceedings. Chavis appealed that finding to the Administrative Review Board of the Department of Corrections. On February 4, 1977, the Review Board interviewed Chavis and the Stateville Assistant Warden. It also reviewed Chavis' master record file as well as a copy of the investigation report upon which the Adjustment Committee had relied. The Review Board concluded that the investigation report did not substantiate Officer Boles' allegations of the stabbing in the October 9, 1976 Violation Report.

The Review Board noted that the report contained the results of a polygraph examination which had been administered to another Stateville resident who provided information about Officer Sipp's stabbing. Specifically, the examination showed that the resident was truthful when he identified someone other than Chavis as having stabbed Officer Sipp. Therefore, the Review Board recommended expungement of the disciplinary report from any and all institutional records, Chavis' release from segregation, grade restoration, and restoration of statutory good time.

Charles J. Rowe, Acting Director of the Illinois Department of Corrections, concurred in those findings and ordered Chavis' administrative transfer to the Menard, Illinois Correctional Center by March 31, 1977.*/ Chavis was released from segregation status shortly after arriving at Menard.

Chavis filed his complaint in the United States District Court against petitioners on September 23, 1977, alleging violations of his rights under the eighth and fourteenth amendments to the United States Constitution. Jurisdiction was alleged under Title 28, United States Code, Section 1343. Chavis asserted, inter alia, that the failure to grant access to the investigation report upon which the Adjustment Committee relied deprived him of his fourteenth amendment right to due process of law. On May 31, 1978, Chavis' entire complaint was dismissed by the district court for failure to state a claim upon which relief could be granted.

Chavis appealed the order of dismissal in forma pauperis. On March 11, 1981, the United States Court of Appeals for the Seventh Circuit reversed the district court's dismissal of Chavis' complaint on several grounds and remanded the case for further proceedings. The court of appeals held, inter alia, that the Adjustment Committee's failure to disclose the exculpatory material contained in the investigation report or its substance resulted in a

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*/ Rowe, a defendant as to other issues presented in the court below, was properly dismissed as a defendant to the claim which is the subject of this Petition and is not, therefore, a Petitioner.

miscarriage of justice for which Chavis' complaint adequately stated a due process claim upon which relief could be granted.

The court of appeals also remanded for further proceedings on four other claims. It ruled that Chavis' complaint stated a claim for: (1) due process violations arising from the Adjustment Committee's failure to provide Chavis with an adequate written statement of the reasons for the disciplinary action taken and the evidence relied upon as required by Wolff v. McDonnell, 418 U.S. 539, 564-65; (2) due process violations arising from that Chavis' transfer from Stateville to Mendard without a hearing or notice of the reasons for the transfer; (3) eighth amendment violations arising from the overcrowded condition of the five-man segregation cell where he was incarcerated for almost six months; and (4) eighth amendment violations arising from the failure of prison officials to provide him with adequate bedding, light, toilet facilities, showers, access to legal materials, medical and dental care and food. Chavis v. Rowe, 643 F.2d at 1287, 1290, 1291.

REASONS FOR DENYING THE WRIT

I.

This Court Should Not Review One Part Of A Decision Reversing An Order Dismissing A Complaint And Remanding For Further Proceedings On Several Issues.

Petitioners seek this Court's review of only one of the five grounds on which the court of appeals held that Chavis had stated a claim upon which relief could be granted. The dismissal of this case has been reversed and it has been remanded to the district court for further proceedings. There has been no showing that immediate review is necessary to prevent some hardship to the litigants in this case. Neither has there been a showing of a special and important reason for review of a decision which is interlocutory in nature.

Because this matter has been remanded for further proceedings on a series of issues, this case is not yet ripe for review. Ordinarily, petitions for certiorari to review non-final judgments are not granted by this Court. Cobbledick v. United States, 309 U.S. 323, 324-325 (1940); American Construction Co. v. Jacksonville, Tampa & Key West Ry., 148 U.S. 372, 384 (1893). The lack of finality alone is a sufficient reason for the denial of certiorari. Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967); Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916). Moreover, resolution of the single issue raised by the certiorari petition will not assist in the continued direction of the case on remand. Therefore, the case at bar does not present a non-final

order appropriate for review. Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 685 n.3 (1949); Land v. Dollar, 330 U.S. 731, 734 n.2 (1947)

Nor will this case be expedited in any manner by review at this time. The district court must still consider Respondent's remaining due process and eighth amendment claims. Beyond Chavis' complaint and Petitioners' Motion to Dismiss, there has been no discovery. Only the facts alleged in the complaint and its incorporated exhibits are presently available to shed light upon the disciplinary hearing and its consequences. There has been no development of the facts of this case to assist this Court in resolving the issues. Moreover, the due process claim challenged here is completely interwoven with a second due process violation found by the court below but not presented to this Court -- the violation arising from the Adjustment Committee's failure adequately to document in writing its findings and the evidence to support them. These issues cannot be separated either legally or factually and should be dealt with together by the district court when the facts are developed.

In essence, Petitioners seek the very type of piecemeal review of a single controversy which this Court has condemned. As the Court stated in Cobbledick v. United States, 309 U.S. 323, 325 (1940), the momentum of judicial administration "would be arrested by permitting separate reviews of the component elements in a unified case." This Court can best review the final judgment of the court below when it is supported by a complete record containing all findings, conclusions and rulings.

II.

Intervention By This Court In Its Supervisory Capacity Is Not Warranted.

A.

The Court of Appeals Gave Adequate Cognizance to Prison Security Considerations.

The court of appeals held that Chavis' complaint stated a cognizable due process claim. The charge before the Adjustment Committee was assault upon an officer. The court found a due process violation because the Adjustment Committee had in its possession evidence never made available to the accused and which totally contradicted the charge. That contradictory evidence established that a prisoner other than the accused committed the stabbing. Further, the evidence was corroborated by a polygraph examination. The court of appeals concluded that the Adjustment Committee's decision resulted in a due process violation because "simple fair play required disclosure to [Chavis] of the exculpatory material or its substance . . . ." Chavis v. Rowe, 643 F.2d 1281, 1286 (7th Cir. 1981) (emphasis in original).

Petitioners assert that the court of appeals failed to recognize and "perceive the adverse consequences on internal administration of a prison" which would result from a requirement that exculpatory evidence be produced in a prison disciplinary hearing. (Petitioners' Br. 7-8). The primary administrative difficulty asserted is that if authorities must comply with the decision below, inmates will no longer come to prison authorities as informants for fear that their identity will be exposed.

Contrary to Petitioners' argument, the court of appeals carefully considered, in accordance with Wolff v.

McDonnell, 418 U.S. 539 (1974), whether imposition of its ruling would adversely affect the interest of the state in maintaining peace and security in correctional institutions. The court concluded:

> Conceivably there may be situations in which prison officials reasonably fear that disclosure of the entire [investigative] report, certain names of other prisoners, or the like, may cause disruption or danger. At the complaint stage, however, there is no reason to presume that type of situation, nor any reason why at least the substance of the other inmate's [exculpatory] statement could not safely have been disclosed to Chavis.

643 F.2d at 1286 (emphasis added). The court's opinion provides safeguards to avoid any potential administrative problem. It neither ordered the disclosure of all evidence obtained during an investigation nor the disclosure of an entire investigative report which might contain inmates' names or information which otherwise could cause institutional disruption or danger. Rather, the court found that "at the complaint stage," before the facts of the case have been developed, there is no reason to presume danger or assume that the substance of the exculpatory statement could not safely be disclosed to the accused. Moreover, the language of the decision anticipates that Petitioners will have an opportunity on remand to establish facts demonstrating a justification for the non-disclosure in this case.

Petitioners assert that a mere reading of the opinion will make inmates believe that their identity as informants is jeopardized. (Petitioners' Br. 8). Petitioners' argument that the decision below will thwart the generation of inmate informants is wholly without basis in this record. The court below specifically found in this case that the duty of prison authorities was to give Chavis "the fairest

hearing possible within the context of maintaining institutional safety." 643 F.2d at 1289. Petitioner's predictions about the manner in which this decision may be misread are patently specious.

B.

The Decision of the Court of Appeals Is Consistent With Wolff v. McDonnell.

This Court has established that the due process must be observed in a prison disciplinary hearing. Wolff v. McDonnell, 418 U.S. 539 (1974). The only question presented to the court below was whether Chavis' complaint stated a claim that due process had not been observed in his case.*/ The court of appeals specifically found that "the Adjustment Committee's procedures did not meet the minimum due process standards required by Wolff." 643 F.2d at 1285. The procedures found defective included both the failure of the Committee to give adequate written reasons for the imposition of punishment and its failure to grant Chavis access to exculpatory information. The court of appeals properly treated these two elements as intimately related in examining the fundamental requirements of due process in Chavis' case.

The court of appeals held that the least Chavis was entitled to was a finding based on some evidence. Had

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*/ Petitioners contend that prison disciplinary actions have less serious consequences than criminal prosecutions. (Petitioners' Br. 7). The degree of seriousness of the liberty deprivation entailed in Chavis' loss of two years of statutory good time and in his extended confinement in segregation is not at issue here. This question was raised and resolved in Wolff where this Court held the interest was sufficient to require due process protection.

the Committee given a clear statement of the reasons for the imposition of sanctions, it then would have seen the lack of evidence to support a finding of guilt in this case. If Chavis had access to the exculpatory evidence, he could have argued it to the Committee and assured that it was brought to their attention for consideration.

Wolff states that even in the prison context "[t]he touchstone of due process is protection of the individual against arbitrary action of the government." 418 U.S. at 558. This Court has repeatedly stated that fundamental due process is violated when there is a deprivation of liberty on the basis of a record totally devoid of evidentiary support. As Mr. Justice Black wrote in Thompson v. Louisville, 362 U.S. 199 (1960):

> Just as 'Conviction upon a charge not made would be sheer denial of due process,' so it is a violation of due process to convict and punish a man without evidence of his guilt.

362 U.S. at 206 (footnotes omitted). See, e.g., Douglas v. Buder, 412 U.S. 430, 432 (1973) (probation revocation); Boilermakers v. Hardeman, 401 U.S. 233, 246 (1971).

In this case, there was no evidence supporting the Adjustment Committee's finding. As the court of appeals states, Sipp's statement created doubt of Chavis' guilt by asserting that Chavis had his hands in his pockets during the incident. 643 F.2d at 1286. The other inmate's statement and the polygraph examination which supported it completely exculpated Chavis. This was the conclusion reached not only of the court of appeals, but by the Administrative Review Board itself. When the Review Board finally examined all the evidence, it concluded that there was no evidence to substantiate the disciplinary charge against Chavis.

Petitioners argue that the holding in this case is an improper extension of the decision in Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976). (Petitioners' Br. 5). It is not. The court of appeals did not extend either Brady or Agurs. It did not require full disclosure of all exculpatory information as is required in a criminal proceeding. It examined Brady and Agurs only for their underlying principle of fundamental fairness which requires both that a trier of fact consider all relevant evidence in reaching a conclusion of guilt or innocence and that an accused person have the opportunity to prepare his best defense.

The rule applied by the court of appeals is consistent with the holding in Wolff v. McDonnell. Due process is devoid of meaning if findings of guilt without evidence are permitted. This Court has specifically stated in Wolff that:

> [T]he provision for a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause to or defending himself from others. It may be that there will be occasions when personal or institutional safety is so implicated that the statement may properly exclude certain items of evidence, but in that event the statement should indicate the fact of the omission.

418 U.S. at 565. Nothing could be more inconsistent with the rudimentary demands of justice and due process than the arbitrary abrogation of liberty where there has been suppression of material evidence favorable to any accused.

In the instant case, because important facts were withheld, Chavis had no adequate opportunity to assess or argue the evidence against the charge that he stabbed

Officer Sipp. Thus, Chavis defended himself by denying the stabbing charge and arguing that the Committee should consider that Officer Sipp had already filed a charge against him arising out of the stabbing incident. Chavis argued that the original charge, which was dismissed, contained Sipp's acknowledgement that Sipp had already been stabbed when he first observed Chavis remove his hands from his pockets and come toward Sipp. Chavis had no opportunity to bolster that defense with the polygraph-tested statement exculpating him.

In rendering its opinion, the Adjustment Committee, in its handwritten finding, simply says that, "[w]e accept the investigation report as being true." Neither the report nor its substance was made available to the accused. The failure to make adequate findings is inseparably connected to the failure to grant Chavis access to the exculpatory evidence or its substance.

This case might have been obviated had the Committee made the detailed findings required. If Chavis had been able to argue the exculpatory evidence, he could have presented his case more forcefully. The Committee might well have acquitted him or the Inquiry Board could have reversed the decision as early as three weeks after the initial ruling stripping him of his good time credits and confining him in segregation. 643 F.2d at 1287.

The court of appeals' decision does not depart from the accepted and usual course of judicial proceedings. Nor does it involve an important question of public interest. It does not call for an exercise of this Court's supervisory power by the granting of a writ of certiorari to the court below. Fundamental fairness requires that prison discipline be premised on findings supported by evidence. The access

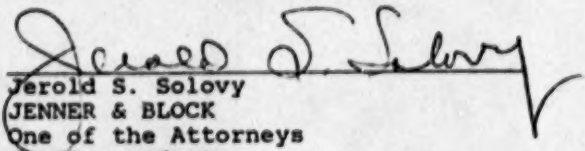
to exculpatory evidence and the reasons relied upon in imposing discipline are key elements in assuring this most basic requirement.

Finally, Petitioners have established no conflict between this decision and the decision of any state court or any other circuit among the federal courts of appeal.

CONCLUSION

Wherefore, for the reasons set forth above, it is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,



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STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

CERTIFICATE OF MAILING

JEROLD S. SOLOVY, being first duly sworn on oath, states as follows:

I am a member of the Bar of this Court. On July 24, 1981, the date on which Respondent's Brief In Opposition To Petition For Certiorari was due to be filed in this Court, I caused a copy of that brief to be sealed in an envelope bearing sufficient first-class postage. Before the hour of 5:00 P.M., I caused the envelope to be deposited at the United States Post Office, Chicago, Illinois, properly addressed to:

Hon. Michael Rodak, Jr.
Clerk
United States Supreme Court
Washington, D.C. 20543

Respectfully submitted,

Jerold S. Solovy

SUBSCRIBED and SWORN TO before me this 24th day of July, 1981.

Notary Public

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 1981, a copy of Respondent's Brief In Opposition To Petition For Certiorari to the United States Court of Appeals for the Seventh Circuit and an accompanying Motion For Leave To Proceed In Forma Pauperis were mailed from One IBM Plaza, Chicago, Illinois, postage prepaid, to Tyrone C. Fahner, Attorney General, State of Illinois, 160 North La Salle Street, Suite 800, Chicago, Illinois 60601, Attention: Paul J. Bargiel and Edward M. Kay,

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